IP 00-1815-C H/K Williams v Ingram
Judge David F. Hamilton Signed on 12/21/06

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARLA WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. IP 00-1815-C H/K
	)	
FRANCIS INGRAM, individually and as an Indianapolis Police Officer,	)	
	)	
Defendant.	)	

ENTRY ON PLAINTIFF'S THIRD SUPPLEMENTAL
PETITION FOR ATTORNEY FEES

This case, in its prolonged post-judgment phase, now presents an intriguing knot that ties together federal and state law and the federal and state courts. One part of the knot consists of the complex doctrines that focus liability for most federal civil rights violations against individual police officers rather than their employers. The other part of the knot consists of the state law obligations and local government practices by which the officers' employers may defend and often indemnify officers for all or part of their liabilities under federal civil rights laws. See generally *Board of Commissioners of Bryan County v. Brown*, 520 U.S. 397, 431-36 (1997) (Breyer, J., dissenting) (arguing for reconsideration of the rejection of *respondeat superior* liability under 42 U.S.C. § 1983 as set forth in *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and noting importance of state indemnification statutes). The principal issue now before this federal court is

whether to award supplemental attorney fees against a defendant officer for work the prevailing civil rights plaintiff's lawyers have done in a state court case to try to force the officer's employer under state law to pay all or part of the federal civil rights judgments against him.

The Background

Defendant Francis Ingram was an officer with the Indianapolis Police Department. Plaintiff Marla Williams was working in 1999 as a dancer at an adult nightclub in Indianapolis. In September 1999, Ingram falsely arrested Williams at least twice as she was leaving work late at night. In both instances, he attempted to use his authority as a police officer to coerce sexual favors from Williams (in return for not taking her to jail). Ingram was also involved in other similar incidents with other dancers in 1999 and 2000. The State of Indiana prosecuted Ingram on several criminal charges. He was tried and found guilty of similar crimes against another woman. He served a substantial sentence of imprisonment in the Indiana Department of Correction and lost his position as a police officer, of course. The record in this case does not indicate that Ingram has been convicted of crimes against Williams.

Plaintiff Williams filed this federal civil rights suit under 42 U.S.C. § 1983 against Ingram on November 22, 2000.[1] This court delayed discovery and trial

[1]The complaint might have been construed as asserting both individual and (continued...)

because of the criminal charges pending against Ingram and because of a case in state court concerning whether the City of Indianapolis had a duty under state law to defend Ingram in this case. Judge Dreyer of the Marion Superior Court held that the City did not have a duty to defend Ingram. A divided panel of the Indiana Court of Appeals held that the City was obliged to provide a defense. *Ingram v. City of Indianapolis*, 759 N.E.2d 1144 (Ind. App. 2001) (Brook, J., dissenting). By a vote of three to two, the Indiana Supreme Court denied transfer. 774 N.E.2d 519 (Ind. 2002). Pursuant to the state court decision, the City then provided new defense counsel for Ingram in this case.

This federal civil rights case was tried in November 2002. The jury found in favor of plaintiff Williams and awarded compensatory damages of $1,500 and punitive damages of $60,000. The court entered judgment against Ingram for $61,500 on November 15, 2002 and later entered a separate judgment awarding attorney fees and costs of $61,135.80.

Plaintiff has encountered great difficulty in collecting from Ingram himself. Her efforts to collect have included proceedings supplemental under the Federal Rules of Civil Procedure. Ingram then filed for bankruptcy protection, but he did not obtain a discharge of the judgments in this case.

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[1](...continued)
official capacity claims against Ingram, but plaintiff has never attempted to pursue a theory of a municipal policy or custom that might have supported an official capacity claim under 42 U.S.C. § 1983. The case was tried only on the individual capacity claim against Ingram.

As a result of these unsurprising difficulties in collecting from Ingram, plaintiff has been trying to require the City to pay all or part of the judgments against Ingram. The current dispute concerns a complaint that Williams filed against the City of Indianapolis in state court on November 15, 2004, Cause No. 49D120411PL002188. The complaint in that action recites the history of this lawsuit and alleges that the City of Indianapolis is liable for the federal judgments against Ingram in his individual capacity, including attorney fees. The complaint relies on Indianapolis Ordinance § 292-1(a), which provides that the City shall indemnify and defend officers "with respect to any action filed against them in their official or individual capacities, or both, if the action complained of was taken within the scope and arising out of the performance of official duties and responsibilities." Subsection (c) of the provision limits the City's obligation to indemnify, however, so that it does not "extend to acts of malice, acts of a willful or wanton nature, criminal acts, act calculated to accrue to the personal benefit of the individual officer, employee or agent, or acts which are clearly beyond the duties and/or scope of authority of such person." In the absence of a judicial determination of how the ordinance applies to any particular case, the City's corporation counsel may determine whether any of these exceptions apply in a written finding presented to the City-County Council, which may reject the finding.

Williams' state court complaint against the City seeks relief under the ordinance. In the alternative, if the ordinance were deemed inapplicable to her

claims against Ingram, Williams' complaint alleges that the ordinance violates the equal privileges provision in Article I, § 23 of the Indiana Constitution, and alleges that the Indiana statute regulating indemnification of officers (Indiana Code § 34-13-4-1) also violates the same provision of the Indiana Constitution. The state constitutional claims assert that the exceptions in the ordinance and the statute for the most egregious violations of constitutional rights by police officers mean that the victims of the most egregious violations are likely to recover little or no compensation, while victims of lesser wrongs will be compensated by the City.

The Pending Request

Williams' pending third supplemental request for attorney fees against Ingram seeks additional fees and expenses incurred since this court entered judgment against him. The court previously denied Williams' first and second supplemental fee petitions (Docket Nos. 105 and 108) because this action was stayed automatically pursuant to 11 U.S.C. § 362 (automatic bankruptcy stay). Those denials should be deemed without prejudice to renewal, and the third supplemental petition incorporates both of those earlier requests. The court addresses all three in this entry.

The first supplemental petition seeks a total of $6,892.83. The second seeks an additional $9,050.00. The third supplemental petition seeks an additional $29,067.00. However, there is some overlap and duplication between the second

and third petitions. The second covers October 2004 through April 2005. The third starts in September 2004 and goes through August 2006.

Ingram has not responded to any of these matters, including the third petition, which was filed after the bankruptcy stay was lifted. However, the City of Indianapolis intervened to oppose at least the third supplemental petition. The City's interest in the supplemental petitions will depend on the outcome of the pending *Williams v. City of Indianapolis* action in state court. If Williams is successful in state court, then any supplemental awards by this court could increase the City's ultimate liability.[2]

The state law questions are not before this court. The only issue before this court, though it may have limited practical impact apart from the state court action, is whether plaintiff is legally entitled to recover *from defendant Ingram* any or all of the additional legal fees incurred in the post-judgment efforts to collect the judgments.

The Seventh Circuit held in *Balark v. Curtin*, 655 F.2d 798, 803 (7th Cir. 1981), that an award of fees under 42 U.S.C. § 1988 may include an attorney's time spent collecting a judgment awarded under 42 U.S.C. § 1983. In *Balark*, one

[2]Plaintiff points out the tension between the City's decision to intervene in this lawsuit and its assertion in the state court lawsuit that it could not be held legally responsible for any of Ingram's obligations. It is perfectly reasonable, however, for the City to take prudent steps to protect its interests in the event that the state courts disagree with its refusal to indemnify Ingram.

plaintiff pursued post-judgment garnishment of the defendant officers' wages pursuant to Rules 69 and 70 of the Federal Rules of Civil Procedure. The district court denied the plaintiffs' supplemental fee request, but the Seventh Circuit reversed. The Seventh Circuit's opinion followed the reasoning of cases holding that time spent litigating entitlement to attorney fees is compensable. The court extended that reasoning to collection efforts because denial of such efforts would effectively dilute the full compensation intended by Congress. 655 F.2d at 803.

That rule adopted in *Balark* has been followed and applied in a number of similar contexts. See, *e.g.*, *Vukadinovich v. McCarthy*, 59 F.3d 58, 60-61 (7th Cir. 1995) (extending rule of *Balark* to collection efforts by prevailing defendants who win fee awards); *Free v. Briody*, 793 F.2d 807, 808-09 (7th Cir. 1986) (extending rule of *Balark* to collection efforts by prevailing parties under ERISA); *Shaw v. AAA Engineering & Drafting, Inc.*, 213 F.3d 538, 544-45 (10th Cir. 2000) (applying principle of *Balark* to collection efforts by prevailing parties under federal False Claims Act); *Brinn v. Tidewater Transportation District Comm'n*, 113 F. Supp. 2d 935, 938 (E.D. Va. 2000) (holding attorney fees incurred in collecting award of attorney fees under § 1988 were also compensable under § 1988); *Seibel v. Paolino*, 249 B.R. 384, 387 (E.D. Pa. 2000) (holding that attorney's successful efforts to oppose bankruptcy discharge of judgment were compensable under Title VII of Civil Rights Act of 1964); *Pinshaw v. Monk*, 565 F. Supp. 44, 45 (D. Mass. 1983) (citing *Balark* and holding that attorney's successful efforts to oppose bankruptcy discharge of civil rights judgment were compensable under § 1988).

In light of *Balark*, the court can, should, and does award supplemental fees for Williams' attorneys' efforts to collect the judgments against Ingram himself, including their successful efforts to oppose discharge in bankruptcy.

The trickier question, but one with greater potential practical effect, is whether this reasoning extends to ordering Ingram to pay Williams' attorneys for their efforts to force the non-party City to pay the judgments against Ingram. (The City was not a party to the underlying judgment, though it has intervened to protect its interests generated by Williams' effort in state court to hold it liable for the judgments.) On this question, the parties have stated their positions but have not offered relevant authority.

The Fourth Circuit's decision in *Dotson v. Chester*, 937 F.2d 920 (4th Cir. 1991), is instructive here, despite some critical factual differences. *Dotson* was a § 1983 suit by jail inmates challenging the conditions of a county jail. The case was settled under an agreement that permitted the district court to allocate plaintiffs' attorney fees between the county commissioners and the county sheriff. 937 F.2d at 922. The district court allocated the fees so that the board of county commissioners was liable for one fifth and the sheriff was responsible for the other four fifths. The sheriff did not pay his share, however, so the plaintiffs sought to collect those fees from the board of commissioners, using garnishment efforts in the district court. The district court ultimately found that the board of commissioners was responsible for the sheriff's portion of the fees because the

sheriff had acted as a policymaker for the county when operating the jail, so that the county was properly liable under § 1983 for the sheriff's actions. The district court also held the board of commissioners liable for additional attorney fees incurred in the effort to collect the fee award from the county. *Id.* at 923.

The Fourth Circuit affirmed both decisions. In deciding whether the county was liable for the original fee award, the Fourth Circuit applied the standards under § 1983 for identifying the relevant policymaker for liability under *Monell v. Department of Social Services*, 438 U.S. 658 690-91 (1978), and *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988). That effort required a detailed slog through state and local law governing jails and sheriffs. At the end of that slog, the Fourth Circuit concluded "that both state and local law point to the Sheriff as the final policymaker for the County when operating the County Jail," and the court held "that the County is properly responsible for the attorney's fees and costs apportioned to the Sheriff." 937 F.2d at 932.

The Fourth Circuit then turned to the supplemental fee award for the collection efforts against the county. The *Dotson* court followed the Seventh Circuit's reasoning in *Balark* and affirmed the fee award. 937 F.2d at 933. In reaching that decision, the Fourth Circuit emphasized that the collection efforts had resulted "from the need to decide the question of final policymaking authority – an issue inherently related to § 1983 and § 1988 litigation." *Id.* In doing so, the court distinguished its decision in *Willie M. v. Hunt*, 732 F.2d 383 (4th Cir. 1984),

which had reversed a supplemental fee award and held that professional services for litigating the interpretation of a consent decree were not compensable under § 1988 because the litigation was more akin to a question of contract interpretation and was not "inextricably intermingled with the original claims in the lawsuit."

Based on the reasoning of *Dotson*, this court concludes that attorneys' efforts to collect judgments against other defendants who are themselves also directly liable under federal law (§ 1983 and § 1988) can be compensable under § 1988. The reasoning of *Dotson* does not extend, however, to efforts *solely under state law* to hold other entities and persons liable for the underlying federal judgment. Put another way, under controlling federal law, plaintiff Williams could not come into federal court to hold the City of Indianapolis liable for the judgments she has won against Ingram. Perhaps state law provides a basis for such liability – that question is up to the state courts – but it is also up to state law to decide whether attorney fees are available for successful efforts to impose such liability under a state law theory of indemnification. Accordingly, this court will not hold Ingram liable for the additional attorney fees that Williams has incurred in seeking to hold the City liable for the underlying judgments.[3]

[3]On November 16, 2006, Judge Moberly of the Marion Superior Court ordered the City's corporation counsel to determine immediately the presence or absence of conditions that could result in denial of indemnification and to present his determination to the City-County Council in the form of a written finding, as required by the ordinance.

Based on this reasoning, the court must exclude from Williams' supplemental fee requests the attorney time spent on *Williams v. City of Indianapolis*. Time spent on the *Williams v. Ingram* proceedings supplemental and his bankruptcy case is compensable under § 1988. The compensable fees incurred after the original fee award will be awarded at the attorneys' current rates, to compensate for the delay in payment. On this ground, after reviewing the billing records, the court awards attorney fees totaling $6,238.50, plus costs of $74.50, for a total supplemental award of $6,313.00.[4]

Plaintiff's attorneys have also requested that the court supplement the original fee award by recalculating the compensable hours at their current hourly rates. Technically speaking, this request is a request to modify a final judgment, presumably pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. The amount of that obligation was established in the original judgment entered on February 21, 2003. Federal law provides for post-judgment interest on that obligation. See 28 U.S.C. § 1961. The accrual of post-judgment interest is the legal compensation for delayed payment of the obligation. The court sees no basis for re-computing and supplementing that original judgment based on the passage of time.

[4]The fee is based on 10.22 hours for attorney Sutherlin at $375 per hour and 12.03 hours for attorney Conway at $200 per hour.

Based on these principles, the court grants the third supplemental fee petition in part, to the extent of $6,313.00, and denies the petition to the extent it seeks more. The court will enter a supplemental judgment against defendant Ingram for $6,313.00.

So ordered.

Date: December 21, 2006

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Michael K. Sutherlin
Michael K. Sutherlin & Associates
P.O. Box 441095
Indianapolis, Indiana 46244

Francis Ingram
320 Coquina Key Lane, #C
Indianapolis, Indiana 46254

Ian Stewart
James Osborn
Assistant Corporation Counsel
Office of Corporation Counsel
1601 City-County Building
200 East Washington Street
Indianapolis, Indiana 46204

Steven Lovern
The Law Office of Steven Lovern
7255 West 10th Street
Indianapolis, Indiana 46204

Nancy J. Gargula
United States Trustee
P.O. Box 44978

Indianapolis, Indiana 46244